IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/09/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.23937 of 2001

L.Loganathan ... Petitioner

-Vs-

1. The Managing Director,
Tamilnadu Express State Transport
Corporation,
Chennai-2.

2. The General Manager (Admn.),
Tamilnadu Express State Transport
Corpn., Chennai-2. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.R.Ramesh

For respondents: Mr.L.G.Sahadevan

:O R D E R
The above writ petition has been filed praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order bearing No.59/87128/U2/ Aa.Ve.Po.Ka/Tha.na.No.2/98 dated 25.8.1999 of the first respondent and quash the same and consequently direct the respondents to consider the petitioner's representation dated 29.9 .1999 for providing an alternative appointment.

2. Heard the learned counsel for both and perused the materials placed on record.

3. The case of the petitioner is that he was appointed driver in the respondent Corporation in the year 1991 and during 1997, while the bus driven by the petitioner herein was involved in an accident with another bus, the petitioner herein was seriously injured and the doctor had also certified that he was not fit to drive the public transport and recommended for an alternative job. However, he was not taken back to service by the respondents nor provided any other job, in spite of many representations having been made

by the petitioner herein.

4. The further case of the petitioner is that while so, on 20.7.19 99, the respondents herein issued a show cause notice as to why his services should not be terminated. Though a detailed explanation was given to the said show cause notice by the petitioner, the first respondent herein passed the impugned order terminating him from service. Even thereafter, the petitioner made a requisition to the first respondent on 29.9.1999 seeking to provide him an alternate job, but there was no reply. Hence the writ petition seeking the relief as extracted supra.

5. Today, it is brought to the notice of this Court an order made in W.P.No.40270 of 2002 dated 11.8.2003, wherein a single Judge of this Court, in an identical case, has passed the following order:-

"6. In similar circumstances, the Supreme Court in the case of Anand Bihari Vs. Rajasthan SRTC (1991 SCC (L&S) 393) directed the management to consider the appointment to alternate post. The said judgment was subsequently followed by the Supreme Court in C.A.Nos.12832-33 of 1996 dated 23.9.1996."
"9. In view of the above, the writ petition is disposed of with a direction to the respondent Corporation to appoint the petitioner in an any of the vacancy either as clerk or as office assistant, which exists as on date or in the first vacancy that may arise in future."

6. Likewise, in a similar case reported in 2003 AIR SCW 1013 (Kunal Singh v. Union of India), the Apex Court has held :-
"The argument of the learned counsel for the respondent on the basis of definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired 'disability' within the meaning of Section 2(i) of the Act and not a person with disability.

We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS (Pension) Rules. The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further, Section 72 of the Act also supports the case of the appellant which reads :

"72. Act to be in addition to and not in derogation of any other law. -- The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

Merely because under Rule 38 of CCS (Pension) Rules, 1972, the

appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provision of Section 47 of the Act.

For the reasons stated and discussions made above, the appeal deserves to be accepted. Hence, the impugned order affirming the order of termination of services of the appellant is set aside and the appeal is allowed. We direct the respondents to give relief in terms of Section 47 of the Act."

Falling in line with the observations made by the Apex Court and of this Court cited supra, if a decision has to be arrived at by this court in the case in hand, particularly in view of the fact that the respondents have not considered the representation of the petitioner in the manner that it has to be considered and since the order passed by the first respondent goes to show that they have not appropriately dealt with the matter in the manner required under law, this court has to allow the above writ petition to its prayer.

In result,

(i) the above writ petition succeeds and the same is allowed;

(ii) the order bearing No.59/87128/U2/ Aa.Ve.Po.Ka/Tha.na.No.2/98 dated 25.8.1999 of the first respondent is hereby quashed;

(iii) the respondents are further directed to consider the representation of the petitioner dated 29.9.1999 within the meaning and in terms of the above judgments cited and pass orders within thirty days from the date of receipt of a copy of this order, thus providing a suitable alternate job to him;
No costs.

Index:Yes
Internet:Yes

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To

1. The Managing Director,
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Chennai-2.

2. The General Manager (Admn.),
Tamilnadu Express State Transport
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